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No. 86-1593

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1987

SHELL OIL COMPANY, APPELLANT

v.

DEPARTMENT OF REVENUE, STATE OF FLORIDA

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the Outer Continental Shelf Lands Act, 43 U.S.C. 1333(a)(2)(A), which provides that "State taxation laws shall not apply to the outer Continental Shelf," limits a State's authority to tax an apportioned fraction of income earned from the sale within the United States of oil extracted from the Outer Continental Shelf.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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his brief is submitted in response to the Court's order ting the Solicitor General to express the views of the ted States.

STATEMENT

. Appellant Shell Oil Company is a Delaware cor- ation engaged in exploration for oil and natural gas, as l as production, refining, and marketing of oil and gas ducts. Shell conducts its production activities within ous States and on the Outer Continental Shelf (OCS), re Shell operates a number of drilling platforms for exploration and production of crude oil and natural (J.S. App. 1-6). Shell makes all transfers of OCS ural gas by sale to independent third parties in transac- s completed on the OCS itself (*ibid.*). In the case of de oil, Shell makes some transfers by sale to independ- third parties on the OCS, but delivers most of its OCS to its own pipeline for transport to shore. The oil is n distributed to Shell refineries or chemical plants ted in various States (J.S. App. 1-6 to 1-7; MDA App.

2 to 4-3).[1] Shell markets petroleum products
out the United States, and its primary business ac-
Florida consists of such marketing activities (J.S.
7; MDA App. 2-2).

la imposes a corporate tax measured by "net in-
for the "privilege of conducting business" in
See Fla. Stat. Ann. §§ 220.11, 220.02 (West
987). Under Florida law, a corporation's "net in-
s "that share of its adjusted federal income * * *
apportioned to this state" (*id.* § 220.12(1)). A cor-
's "adjusted federal income" is its taxable income
ral income tax purposes (see *id.* § 220.13(2); MDA
5), as adjusted by, inter alia, subtracting those
"derived from sales outside the United States" net
ses "which are attributable, directly or indirectly
amounts (Fla. Stat. Ann. § 220.13(1)(b)(2) (West
987); MDA App. 1-4 to 1-5). This "adjusted
ncome" is then apportioned between Florida and
ates pursuant to a three-factor formula that takes
count the ratio of the corporation's property,
and sales within Florida to its property, payroll,
s "everywhere" within the United States (Fla. Stat.
214.71, 220.15(3) (West Supp. 1987)).[2]

mputing its Florida income tax for 1972 through
ell excluded from its "adjusted federal income"
to apportionment its actual or deemed earnings
CS oil and gas production. Where Shell consum-
les of OCS oil and gas by transfers to third parties
OCS, the excluded earnings consisted of its gross
from those sales, less related costs and expenses.

A App." refers to the Appendix to Appellee's Motion to
r Affirm.

g the relevant time period (1972 through 1975),
re" meant "in all states of the United States, the District of
, or any political subdivision of the foregoing" (see J.S.
).

re the oil was simply transferred into Shell's own
ine, the amount excluded consisted of the wellhead
market value of the oil, less related costs and expenses
App. 1-6 to 1-7). On audit, appellee Florida Depart-
of Revenue disallowed the claimed exclusion in part,
g that the wellhead value of the OCS oil, less related
nses, had to be restored to Shell's apportionable in-
e (*id.* at 1-7). The Department's action was based on
osition that insofar as Shell's oil was transferred into
wn pipeline rather than sold to third parties on the
, any income ultimately realized from sale of the
ucts into which the oil was refined was realized within
ontinental United States, and hence was includable in
's apportionable income for Florida tax purposes.

Shell brought this action in the Circuit Court for
County, contending that the Supremacy Clause re-
d Florida to exclude the wellhead value of Shell's
oil, less related costs and expenses, from Shell's ap-
onable tax base (MDA App. 2-5 to 2-6). In so
ending, Shell relied on the Outer Continental Shelf
ls Act (OCSLA), 43 U.S.C. 1333(a)(2)(A), which pro-
that "State taxation laws shall not apply to the outer
inental Shelf." The circuit court denied Shell's motion
ummary judgment and granted the Department's mo-
(J.S. App. 3-1 to 3-5).

e district court of appeal affirmed, holding that
LA does not prohibit Florida from taxing income
the sale in the United States of products of oil ex-
ed from the OCS. The court noted (J.S. App. 2-9 to
that, if Shell's position were taken to its logical con-
on, "a state could not impose any tax * * * for any
uct [Shell] derives from its outer continental shelf
," a result that the court believed Congress could not
intended.

3. Upon certification from the district court of appeal (J.S. App. 2-24), the Florida Supreme Court affirmed the holding that OCSLA does not prohibit a State from imposing a tax upon income derived from a sale in the United States of products of oil extracted from the OCS. The court emphasized (*id.* at 1-8) the Department's concession that "any revenues which Shell derives from actual sales consummated on the OCS oil platforms are beyond the reach of Florida's taxing power as limited by Section 1333(a)(2)," and hence that "the dispute concerns only the income derived from sales of OCS oil actually made within the boundaries of the fifty states." The court reasoned that because the sales of oil occurred in the United States, and because "both parties agree[d] that Florida can generally levy an apportioned tax on income derived within any of the fifty states" (J.S. App. 1-12), the tax in question did not infringe upon the federal government's exclusive jurisdiction over the OCS. As the court viewed the matter, a state tax on income derived from those sales was not preempted by OCSLA because Section 1333(a)(2) "simply constitutes a limitation of state authority over the OCS area and does not seem intended to address income derived outside the OCS" (J.S. App. 1-9 to 1-10 (footnote omitted)).

Two justices dissented (J.S. App. 1-18 to 1-36). They concluded that Florida's corporate income tax as applied "directly conflicts" with the federal prohibition against the application of state tax laws to the OCS. They further asserted (*id.* at 1-26) that Florida's tax is at odds with "the major purpose" of OCSLA, which is "to give the federal government exclusive control over the development and production of the mineral resources lying outside the three mile limit."[3]

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[3] The Florida courts also addressed various issues relating to the proper calculation of Florida's apportionment formula. Although

DISCUSSION

Appellant contends that the Outer Continental Shelf Lands Act limits state authority to tax income earned from the sale in any State of products derived from oil produced on the OCS. Shell concedes that the States may tax such income insofar as it is deemed to derive from downstream refining and marketing activities carried on within the fifty States. Shell contends, however, that the States must "back out" from Shell's apportionable tax base that portion of its income deemed to derive from exploration and production activities occurring on the OCS, even though that income is not realized within the OCS through third-party sales. This "backing out" is to be accomplished, in Shell's view, by reducing its apportionable income by the wellhead fair market value of its OCS crude, less related costs and expenses.[4] This supposed federal statutory limitation is based on the Supremacy Clause and is wholly apart from any constitutional limitations imposed by the Due Process and Commerce Clauses on a State's apportionment, for income tax purposes, of income derived from a company's activities in multiple jurisdictions. See, *e.g.*, *Container Corp. of America* v. *Franchise Tax Bd.*, 463 U.S. 159 (1983); *Exxon Corp.* v. *Dep't of Revenue,*

Shell asserts (J.S. 21) that the States have engaged in "manipulation of apportionment factors and formulae" and that there is "no uniformity" among the States in the methodologies used, Shell has not actually presented any such Due Process or Commerce Clause questions to this Court (see J.S. i; Reply Br. 1-2). We accordingly do not address them.

[4] Shell refers (see, *e.g.*, J.S. i, 19, 22; Reply Br. 10) to the wellhead value of its OCS oil, less related costs and expenses, as "production income." The mere act of extracting oil, however, does not give rise to income under federal or state income tax laws. See pages 9-10, *infra*. The term "production income," as used by Shell, is thus an economic or accounting concept that has no particular legal significance.

447 U.S. 207 (1980); *Mobil Oil Corp.* v. *Commissioner of Taxes,* 445 U.S. 425 (1980); *Underwood Typewriter Co.* v. *Chamberlain,* 254 U.S. 113 (1920). For purposes of this appeal, therefore, we may assume that Florida's apportionment of Shell's income comports with generally applicable Due Process and Commerce Clause requirements. Indeed, Shell in this Court specifically disclaims any challenge to Florida's apportionment formula. See note 3, *supra.*

In our view, the Florida Supreme Court—the first state supreme court to address the issue—correctly rejected Shell's preemption claim. The statutory language, the structure of the statute, and the relevant legislative history show that Congress intended in OCSLA to bar any State from subjecting activities on the OCS to taxation as if the OCS were located within the State's borders. A State, therefore, may not impose a severance, production, property, or sales tax on Shell's activities on the OCS. Nor, as Florida has properly conceded (see J.S. App. 1-8), may a State, consistently with the Supremacy Clause, tax income earned by Shell from OCS oil or gas sales that are completed on the OCS itself. The legislative record, however, provides little support for Shell's more sweeping notion that Congress intended in OCSLA to limit state taxation of income earned from sales of products of OCS oil completed outside the OCS and within state borders.

Because we believe the decision of the Florida Supreme Court to be correct, and because the case involves a question of first impression that is of no great importance to the United States, we would have little hesitation in urging that review be denied if the case were here on writ of certiorari. The case, however, is an appeal.[5] Although we

[5] Although appellant as a protective matter has alternatively invoked this Court's certiorari jurisdiction (see J.S. 2-3), we believe that the case is clearly an appeal. Section 1257(2) of 28 U.S.C. provides that an appeal lies from the decision of a state court "where is drawn

find appellant's preemption argument unpersuasive, we do not regard it as being so weak as to render the federal question altogether "insubstantial." Accordingly, we cannot escape the conclusion that probable jurisdiction should be noted.

1. Shell's preemption claim turns on the meaning of 43 U.S.C. 1333(a)(2)(A), which provides that "State taxation laws shall not apply to the outer Continental Shelf." According to Shell (J.S. 15; Reply Br. 3), this provision manifests congressional intent to preempt "any form of state levy, direct or indirect, [that] would adversely affect the amounts of revenue available to the federal government from the sale of leases for exploration and production of Shelf lands." We do not agree that the statute's preemptive force extends so far.[6]

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in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity." This Court has "held consistently that a state statute is sustained within the meaning of § 1257(2) when a state court holds it applicable to a particular set of facts as against the contention that such application is invalid on federal grounds." *Japan Line, Ltd.* v. *County of Los Angeles*, 441 U.S. 434, 441 (1979). Accord, *e.g.*, *Rose* v. *Rose*, No. 85-1206 (May 18, 1987), slip op. 4 n.3; *McCarty* v. *McCarty*, 453 U.S. 210, 219-220 n.12 (1981); R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* 112-113 (6th ed. 1986). Appellant in the instant case squarely argued that Florida's income tax could not, consistently with the Supremacy Clause, be applied to products of OCS-derived oil because OCSLA prohibits such taxation. The Florida Supreme Court rejected that argument, sustaining the Florida tax as thus applied. Accordingly, this is an appeal.

[6] Shell's preemption argument does not extend simply to state income taxes levied by States adjacent to the OCS. Rather, Shell's argument would require every State to exclude the wellhead value of Shell's OCS oil, less related expenses, from the company's apportionable tax base. Shell accordingly has brought a lawsuit similar to this one against the State of Iowa, which is currently pending before the Iowa Supreme Court. See J.S. 22 (citing *Shell Oil Co.* v. *Iowa Dep't of Revenue*, No. 86-1565 (Iowa)). A lawsuit brought by another oil com-

The more limited purpose of the prohibition against state taxation is shown by its statutory context. Section 1333 generally declares the "[l]aws and regulations governing [OCS] lands." Subsection (a)(1) provides that "[t]he Constitution and laws and civil and political jurisdiction of the United States are extended to the * * * [OCS] * * * to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State." As this Court has noted, Subsection (a)(2)(A) then "borrows the 'applicable and not inconsistent' laws of the adjacent States as surrogate federal law" in order to "fill the substantial 'gaps' in the [statute's] coverage." *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 480 (1981); *Rodrigue* v. *Aetna Casualty Co.*, 395 U.S. 352, 357 (1969). Section 1333(a)(2)(A) specifically provides that, "[t]o the extent that they are applicable and not inconsistent with [federal law], the civil and criminal laws of each adjacent State * * * are declared to be the law of the United States for that portion of the * * * [OCS] * * * which would be within the area of the State if its boundaries were extended seaward to the outer margin of the [OCS]." It is in this context that Subsection (a)(2)(A) adds the final caveat,.upon which Shell relies, that "State taxation laws shall not apply to the [OCS]."

The statutory context suggests that Congress, in adding this final caveat, was addressing only the narrow question whether tax laws should be included among those state laws borrowed from adjacent States for application to the OCS. In unequivocally answering that question in the negative, Congress provided, in effect, that a State cannot

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pany raising this issue is also pending in the Alaska courts. See J.S. 22 (citing *Amerada Hess Corp.* v. *Alaska Dep't of Revenue*, No. 3AN-84-05016 (Alaska 3d Cir. Super. Ct.)).

tax activities on the OCS as if those activities were occurring within the State's own jurisdictional borders. Section 1333(a)(2)(A) thus precludes a State from imposing a property tax on property (such as a drilling platform) located on the OCS; from imposing an excise tax on an event (such as extraction of oil) occurring on the OCS; or from imposing an income tax on income (such as earnings from a third-party sale) realized within the OCS. The statute, however, imposes no obvious restriction on the States' ability to tax events occurring or income realized within the continental United States, merely because the petroleum products refined or sold there are ultimately traceable to OCS oil. The statute, after all, says only that "State tax laws shall not apply to the OCS"; it does not purport to cloak OCS oil and gas with a perpetual tax immunity wherever it goes.[7]

Under longstanding principles of federal and state taxation, it is clear that Shell did not realize any income upon extracting OCS oil and placing the oil into its own

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[7] Other, related provisions of OCSLA are consistent with this understanding of the preemptive scope of Section 1333(a)(2)(A). "In order to prevent the lessees from receiving a windfall in being relieved from paying a tax they contemplated paying when they bid in their leases with the States," 43 U.S.C. 1335(a)(9) provides that lessees must "pay[ ] to the Secretary [of the Interior] as an additional royalty on the production from the lease * * * a sum of money equal to the amount of the severance, gross production, or occupation taxes that would have been payable on such production to the State issuing the lease under its laws as they existed on August 7, 1953." S. Rep. 411, 83d Cong., 1st Sess. 3 (1953); see 99 Cong. Rec. 6966 (1953) (remarks of Sen. Cordon). Significantly, Congress did not explicitly increase royalty payments by an amount equal to state income taxes that had previously been imposed on lessees' sales of OCS oil within state borders.

eline, any more than an automobile manufacturer lizes income upon producing an automobile and plac- it into its own truck for delivery to its own warehouse. ere is no formal "realization event" triggering the ognition of income in either circumstance. "Realiza- n" requires that a taxpayer exchange his property for nething of value (*Eisner* v. *Macomber*, 252 U.S. 189 20)), and, until Shell made such a disposition, its OCS remained mere work-in-process inventory. It is true t Shell, for internal accounting purposes, assigned a ue to its oil at the wellhead, and used this figure in essing the relative profitability of its exploration and oduction, as opposed to its downstream, operations. d it is also true that Shell used the fair market value of OCS oil as a "sales equivalent" for a variety of pur- ses, such as computing contract royalties, determining letion allowances, and computing the federal excise tax windfall profits. See J.S. 9 (referring to 26 U.S.C. 613, A, 4987 *et seq.*). But this is not to say that Shell "real- d income" upon transferring the oil from its production ision to its refining division, and Shell makes no con- tion to the contrary. See Reply Br. 4-5. In sum, because income in question was not realized on the OCS, Sec- n 1333(a)(2)(A) of OCSLA erects no bar to its taxation the States.[8]

In computing Shell's income tax, Florida of course permits Shell reat its OCS oil inventory as having a cost determined by those ex- ses it incurred in extracting the oil from the OCS. Florida simply ies that Shell is entitled to claim, for state tax purposes, an addi- al step-up in inventory cost on the basis of a hypothetical OCS . In our view, Florida's action is not precluded by OCSLA. Shell not made a transfer of the oil on the OCS, and Section 3(a)(2)(A) does not prevent Florida from treating net income ized on the subsequent sale of the oil in the fifty States as subject ax under Florida's unitary tax system.

2. The legislative history of the statute supports our reading of the statutory language. "Congress enacted OCSLA in the wake of decisions by this Court that the Federal Government enjoyed sovereignty and ownership of the [OCS] to the exclusion of adjacent States" (*Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. at 479 n.7). See *United States* v. *Texas*, 339 U.S. 707 (1950); *United States* v. *Louisiana*, 339 U.S. 699 (1950); *United States* v. *California*, 332 U.S. 19 (1947). Whether the laws of the adjacent States, including their power of taxation, should extend to the OCS as they had prior to those decisions, was the exclusive focus of congressional concern and debate. Congress nowhere evinced any intent to reduce the exposure of private lessees (such as Shell) to state income tax based on the lessees' sales of OCS oil within the States themselves.

a. Early bills, none of which was enacted, typically provided for the extension of the laws of the adjacent States, including their power of taxation, to the OCS. See, *e.g.*, H.R. 4484, 82d Cong., 1st Sess. § 8(a) (1951); 97 Cong. Rec. 9206 (1951); H.R. Rep. 695, 82d Cong., 1st Sess. 7, 13 (1951); Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 Stan. L. Rev. 23, 29 & nn.28, 29 (1953). In the 83d Congress, a bill was introduced that would have permitted a more limited scope for state taxation, allowing the imposition only of severance or production taxes. See H.R. 4198, 83d Cong., 1st Sess. § 8(a) (1953); H.R. Rep. 215, 83d Cong., 1st Sess. 8 (1953). On the House floor, however, that provision was deleted and was replaced by the prohibition on state taxation that Shell relies upon in this case. See 99 Cong. Rec. 2511-2512, 2571, 2575 (1953).

The bill that eventually passed the Senate was S. 1901, and the process of its drafting reflects Congress's exclusive concern with the authority of adjacent States to treat, for income tax purpose, the OCS as property within their

rders. When first introduced, S. 1901 did not envision application of any state laws to the OCS, providing inad that the OCS should be governed by general prinles of federal maritime law. See S. 1901, 83d Cong., 1st ss. § 4(a) (1953). The bill was then amended in Committo adopt a new approach, which was the approach imately adopted by the Senate as a whole (see 99 Cong. c. 7265 (1953)). First, the reported bill provided that leral law should extend to the OCS "to the same extent if [it] were an area of exclusive Federal jurisdiction ated within a State" (S. Rep. 411, 83d Cong., 1st Sess. (1953)). Second, the reported bill adopted all "apcable and not inconsistent" laws of the adjacent States the governing federal law "for that portion of the [OCS] ich would be within the area of the State if its bounries were extended seaward" (*ibid.*). Hence, unlike lier legislative proposals, S. 1901 as reported *adopted* jacent state law as federal law, rather than formally *exding* adjacent state jurisdiction to the OCS. See *Gulf fshore Co.* v. *Mobil Oil Corp.*, 453 U.S. at 480; *drigue* v. *Aetna Casualty Co.*, 395 U.S. at 355-357; ristopher, *supra*, 6 Stan. L. Rev. at 39-43.

The Senate Committee also added a third provision to 1901, which was intended to ensure that the provisions t described would not be read as conferring any isdiction on adjacent States to extend their power of ation to the OCS. Section 4(a)(3) of the reported bill s provided in "precise unequivocal language" that he provisions of this section for adoption of state law he law of the United States shall never be interpreted as basis for claiming any interest in or jurisdiction on alf of any State for any purpose over * * * the [OCS], the property and natural resources thereof or the enues therefrom" (S. Rep. 411, *supra*, at 11, 16). The ompanying Senate Report explained that "under the ms of S. 1901, as reported, State taxation laws neces-

sarily are excluded from applicability in this area of exclusive Federal jurisdiction not inside the boundaries of any State" (*id.* at 3; see also 99 Cong. Rec. 6963-6964 (1953) (remarks of Sen. Cordon)).

The final version, drafted by the Conference Committee, simply added the House bill's express prohibition on state taxation to the federal-law scheme crafted by the Senate. See H.R. Conf. Rep. 1031, 83d Cong., 1st Sess. (1953); 99 Cong. Rec. 10419 (1953). During Senate discussion of the conference substitute, the Senate sponsor of the legislation expressed the view that the addition of the House language was "unnecessary" and that "[i]t add[ed] nothing to and took nothing from the bill as it passed the Senate." 99 Cong. Rec. 10471-10472 (1953) (remarks of Sen. Cordon). The legislative history therefore shows that Congress's addition of the House language evidenced no change in the congressional design, which was confined to eliminating the authority of the adjacent States to treat, for the purpose of asserting their power of taxation, the OCS as property within their borders.[9]

b. The legislative debates further attest to the limited purpose of the statutory language on which Shell relies. Proponents of state taxation argued that Congress should confer on the adjacent States taxation authority equivalent to that provided in the Mineral Lands Leasing Act of 1920, § 32, 30 U.S.C. 189, with respect to public lands within a state's borders. See, *e.g.*, 99 Cong. Rec. 2509-2510, 2535 (1953) (remarks of Rep. Wilson); *id.* at 7228 (remarks of Sen. Ellender). They argued that the

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[9] We find no merit in Shell's suggestion (J.S. 15-16) that the terms of the Senate provision—now contained in Section 1333(a)(3)—support its claim that Congress harbored a broader purpose. Section 1333(a)(3) was included simply to ensure that the provisions for adoption of adjacent state law "shall never be interpreted" to support an extension of their taxation authority to the OCS (S. Rep. 411, *supra*, at 3).

lens imposed on adjacent States by OCS ac-
ies—particularly the use of public facilities by
loyees—justified state taxing authority. They accord-
supported amendments that would, in effect, "give
tal States the right to extend their jurisdiction to these
S] lands" (*id.* at 7230 (remarks of Sen. Ellender)). See
t 2505 (remarks of Rep. Willis); *id.* at 7228 (remarks
en. Ellender); *Outer Continental Shelf: Hearings on S.*
Before the Senate Comm. on Interior and Insular Af-
, 83d Cong., 1st Sess. 277-278 (1953) [hereinafter
te Hearings] (remarks of Sen. Long).

pponents of state taxation responded that the OCS,
g outside the three-mile limit, was not at all analogous
ublic land within a State's borders. They urged that ex-
on of the power of taxation beyond a State's borders
ld be "unconstitutional" and constitute "larceny" (see
ong. Rec. 2506 (1953) (remarks of Rep. Celler); *id.* at
(remarks of Rep. Machrowicz); *id.* at 2571-2572
arks of Rep. Keating)), and that it would confer a
fall upon the few adjacent States at the expense of the
djacent States (see *id.* 2523 (remarks of Rep.
no); *id.* at 2524 (remarks of Rep. Machrowicz)).

gnificantly, no opponent of taxation by the adjacent
s ever suggested that Congress should limit the States'
ority to tax income received from the sale within the
inental United States of oil products originating from
CS. To the contrary, they came close to refuting that
notion in responding to suggestions made by
sentatives of adjacent States that those States would
werless to raise revenues to offset the burdens caused
CS development. The sponsor of the legislation in the
te noted that "[t]he companies holding the leases will
to build and maintain very substantial shore installa-
within the abutting States, and such shore installa-
will be subject to local taxes" (99 Cong. Rec. 7254

(1953) (remarks of Sen. Cordon)). During Senate Hearings, Assistant Attorney General Rankin similarly explained that an adjacent State would be able "to tax the shore bases" and that, although the State "would not be collecting [a severance tax], * * * it certainly is getting lots of others" (*Senate Hearings* 661-662).[10]

3. For these reasons, we believe that the language and legislative history of Section 1333(a)(2)(A) lend no meaningful support to Shell's claim that Congress intended to preempt any state tax that might incidentally affect adversely federal leasing revenues. The legislative record suggests to us that maximization of economic return was not the driving force behind the legislation,[11] and that

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[10] Shell errs in relying (J.S. 17) on Senator Long's apparent belief that, absent amendment of S. 1901, "employers of these workers are subject neither to the State's severance tax, property tax, nor the tax on corporate profits" (see 99 Cong. Rec. 7261 (1953) (remarks of Sen. Long); S. Rep. 411, *supra,* at 67 (minority report of Sen. Long)). Senator Long's statement was expressly premised on the assumption that a private lessee such as Shell would not be engaging in activities within the taxing State's borders. See *ibid.* Hence, Senator Long was not addressing the distinct issue, raised in this case, whether income received from a sale of OCS oil completed within a State's borders must be reduced by the net value of the oil when it was extracted from the OCS. In any event, any reliance on the "criticisms by the two Sentors from Louisiana, Ellender and Long," is misplaced because they both "opposed the bill that eventually became the OCSLA" (*Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. at 483). It is well settled that " '[t]he fears and doubts of the opposition are no authoritative guide to the construction of legislation.' " *Ibid.* (quoting *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384, 394 (1951)).

[11] Congress recognized, of course, that extension of the adjacent States' power of taxation to the OCS would necessarily decrease federal revenues. See 99 Cong. Rec. 2571 (1953) (remarks of Rep. Keating). Those remarks do not, however, suggest that Congress intended to preempt all state taxes (or other state laws) that might incidentally affect federal revenues, even though the taxes fell on activities occurring within the State's own borders.

gress did not intend to impose such a sweeping restric-
on state taxing powers. Section 1333(a)(2)(A) simply
es plain that the OCS, for tax purposes, is an area of
sive federal jurisdiction outside the borders of any
e State. The effect of the statute is thus to codify the
titutional proscriptions, set forth in the Due Process
Commerce Clauses, against state efforts to tax values
lie outside their jurisdiction. See *Container Corp. of*
rica v. *Franchise Tax Bd.*, 463 U.S. at 164-165.
though we find Shell's preemption argument unper-
ve, we do not regard its position as being altogether
lous. Florida has conceded, as it must, that Shell's
of OCS oil to independent third parties, if completed
e OCS itself, are immune from state income taxation.
.S. App. 1-8. It might be argued from this premise
a corporation's sales of OCS oil to a related corpora-
if completed on the OCS itself, would likewise be im-
e from state income taxation, provided that the sales
orted with the norm of unrelated parties dealing with
other at arm's length. If that is so, Shell might con-
that a different result should not obtain merely
use the transfer occurs (as here) between divisions of a
ry corporation rather than between subsidiaries of a
nt corporation. It is of course well established under
federal tax laws that, "while a taxpayer is free to
nize his affairs as he chooses, nevertheless, once hav-
lone so, he must accept the tax consequences of his
e, whether contemplated or not." *Commissioner* v.
onal Alfalfa Dehydrating & Milling Co., 417 U.S.
149 (1974). But we can imagine a nonfrivolous argu-
that the policies of the Outer Continental Shelf
ls Act would not be furthered by such formal distinc-
.

e question presented here is not of great importance
ne United States, given Florida's concession that

come from sales completed on the OCS itself is exempt
om state tax under Section 1333(a)(3).[12] More specifical-
we are not concerned that state taxation of the sort in-
lved here will be "devastating to future federal lease
venues" (J.S. 20), nor do we think that such fiscal con-
lerations should govern OCSLA's proper interpretation
any event. The question presented, however, is assured-
of some importance to oil companies and to the States,
ven the magnitude of the off-shore leasing program.
vo Justices dissented from the decision of the Florida
preme Court (see J.S. App. 1-18 to 1-36), and the ques-
n is now pending in the courts of other States (see note
supra). This Court's disposition of the instant appeal, of
urse, will be binding in all future litigation on the issue.
us, although we do not believe that plenary review
ould be warranted if the case were here on writ of cer-
rari, we are unable to conclude that the federal question
completely "insubstantial."

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[12] We are informed that the State of Iowa has refused to make this
ncession in Shell's lawsuit now pending in that State. See note 6,
ra. If the Iowa Supreme Court were to uphold state taxation of
nings from OCS sales, that holding would appear to be error and
uld, for that reason, be a stronger candidate for this Court's
iew.

CONCLUSION

Probable jurisdiction should be noted.
Respectfully submitted.

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